

The SUC proposal, however, would not actually implement or employ any form of “direct access” to the INTELSAT system (“Level III” or otherwise). *See* COMSAT Comments at 32-33 (discussing ORBIT’s statutory requirements). Direct access is not involved at all. Neither Sprint, WorldCom, nor any other commenter ever explains how an NMF prescribed by the Commission that does not allow for direct access to INTELSAT can constitute an “appropriate action to facilitate direct access.” 47 U.S.C. §765(b). Rather, the proposal is a transparent attempt to have the Commission prescribe lower rates for *COMSAT-provided* services with no jurisdiction or cost showing whatsoever.<sup>18</sup> On this basis alone, the SUC proposal must be rejected.

Moreover, even assuming *arguendo* that the SUC proposal would not *technically* abrogate COMSAT’s existing INTELSAT capacity contracts, the proposal clearly would *functionally* eviscerate the economic value of those contracts. Specifically, under SUC, COMSAT would continue to be obligated to pay INTELSAT very substantial amounts under long-term capacity commitments—yet COMSAT would be deprived of much of the economic benefit of these large multi-year lease payments. Instead, the SUC proposal would permit COMSAT to recover only its out-of-pocket expenses (if that), while mandating a rate of return of *zero* on the costs COMSAT would incur in its continuing role as a *provider* of INTELSAT service. *See* WorldCom/Sprint Com Reply Comments at 11 (stating that the NMF fee “would be approximately two percent” and would reimburse only “COMSAT’s reasonable costs,” but not provide a rate of return). In so doing, SUC would allow direct access users to selectively appropriate the benefits of COMSAT’s contracts. Moreover, the proposal would allow this

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<sup>18</sup> Indeed, there is no showing whatever as to how Sprint and WorldCom arrived at the 2% figure.

cherry picking without requiring these entities to assume COMSAT's long-term obligations to INTELSAT.

Finally, the *International Settlement Rates* proceedings relied on by WorldCom/Sprint are inapposite and cannot support a rate prescription here. Cf. WorldCom/Sprint Reply Comments at 11 & n.46 (citing *International Settlement Rates*, 14 FCC Rcd 9256, 9262 (1999) and *Cable & Wireless v. FCC*, 166 F.3d 1224, 1231 (D.C. Cir. 1999)). The foreign carriers that were the targets of the FCC's actions there were clearly dominant in their markets. Furthermore, in that proceeding, the court found that the Commission's order "fully compensate[d]" the carriers in question, 166 F.3d at 1232—a finding that clearly could *not* be made in the case of the SUC proposal. Yet the court in *Cable & Wireless* necessarily relied on that finding when it upheld the settlement rates order cited by WorldCom/Sprint. See *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 310 (1989) (noting the "constitutional difficulties" that arise when "the rate which is permitted to charge is so low as to be confiscatory"), discussed in COMSAT Comments at 33.<sup>19</sup> Here, the commenters offer no support for the novel proposition that the Commission may prescribe the rates charged by an entity that has no ability to exercise "market power." See COMSAT Comments at 33. Indeed, the rates of such entities are *presumed* to be market-driven

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<sup>19</sup> Sprint and WorldCom erroneously assert that COMSAT has no "cognizable property interest" in its INTELSAT capacity leases. WorldCom/Sprint Reply Comments at 11. To the contrary, COMSAT's long-term capacity leases with INTELSAT create leasehold interests in the space segment capacity which are fully "cognizable" under the takings clause. See *Alamo Land & Cattle Co., Inc. v. Arizona*, 424 U.S. 295, 303 (1976) ("[T]he holder of an unexpired leasehold interest . . . is entitled, under the Fifth Amendment, to just compensation for the value of that interest. . . .") (footnote and citations omitted).

and lawful.<sup>20</sup> In such circumstances, it would be arbitrary and capricious to impose any form of rate prescription.

**D. The WorldCom/Sprint “Frequency Change” Proposal Is Really A “Portability” Effort In Disguise.**

In addition to the SUC/NMF proposal, WorldCom/Sprint urge the Commission to adopt a proposal that sounds innocuous, but is really a recipe for *de facto* portability and hence contract abrogation. This is the so-called “frequency change” proposal.

According to WorldCom/Sprint , foreign carriers are often “confused” by the requirement of a new match in connection with direct access, and thus are often “unwilling” to provide such matches. WorldCom/Sprint Comments at 10. In addition, WorldCom/Sprint states that INTELSAT has recognized this issue, and had therefore “proposed to treat the transfer of the foreign half-circuit for [a capacity match] as a frequency change.” *Id.* Indeed, WorldCom claims that it had “accepted this approach,” only to have INTELSAT “withdr[aw] its proposal less than three hours later,” allegedly “in response to pressure from COMSAT.” *Id.* This “anticompetitive” behavior by COMSAT is “unacceptable,” according to WorldCom/Sprint, because the failure of a U.S. carrier to obtain a foreign match effectively means that INTELSAT capacity is unavailable. *Id.* Therefore, they suggest, “the Commission should require COMSAT to inform INTELSAT that it does not oppose treating transfers of foreign half-circuits in

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<sup>20</sup> See *COMSAT Non-Dominance Order*, 13 FCC Rcd 14083, ¶ 180 (1998) (noting that non-dominant common carriers may “file tariffs on one day’s notice, without economic cost support, . . . and the tariffs will be presumed lawful.”) (emphasis added). Moreover, even on the so-called “thin routes,” where COMSAT is still classified as a dominant carrier, the FCC has implemented a pricing regulation scheme that effectively precludes the *exercise* of any residual market power that may exist. *Alternative Incentive Based Regulation of COMSAT Corp.*, 14 FCC Rcd 3065, 3074-75 (1999).

connection with direct access as frequency changes.” *Id.* at 14. *See also* WorldCom/Sprint Reply Comments at 10.

It is true that a version of the proposal described above was advanced (without management approval) by a low-level INTELSAT employee. However, WorldCom/Sprint’s characterization of the proposal is seriously misleading. In the first place, what they describe is not a “frequency” change – rather, the whole purpose of the proposal is to allow carriers to remain on the *same* frequencies currently or previously leased from COMSAT. Thus, the so-called “frequency change” proposal was specifically designed to allow the unilateral abrogation of COMSAT’s contractual rights with respect to particular circuits.<sup>21</sup>

This proposal also fails to take proper account of the fact that, in many cases, COMSAT’s commitments to INTELSAT are much longer than the carriers’ commitments to COMSAT. As discussed in COMSAT’s initial comments (and in Section I.B above), this discrepancy in lease terms arose years ago, not because of any desire to frustrate direct access (which was not under consideration at the time), but because of COMSAT’s need to reduce its costs in order to offer its customers lower prices that were competitive with the cost of fiber-optic cables. For present purposes, however, the critical fact is that *COMSAT is obligated to pay INTELSAT for the full term of every one of the circuits it has leased.*

Thus, if COMSAT were evicted from the circuits it currently occupies, it would still have to pay INTELSAT for an equal number of circuits, regardless of whether they were of equal value from the standpoint of COMSAT’s business interests. It must also be recognized that the

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<sup>21</sup> Indeed, it literally provides that a sub-tenant should be permitted unilaterally to substitute itself for one of two joint tenants of a lease over the objection of the tenant being replaced and without the knowledge or consent of the other tenant whose interests are affected. This is true even though the sub-tenant is not assuming the same lease term.

capacity COMSAT currently has under contract with INTELSAT was located and secured by the company to serve its business plans and those of its potential U.S. customers. In addition, this capacity has been substantially improved by COMSAT through its own efforts over many years. *See* Miller Affidavit ¶ 4. Although it is an article of faith in some quarters that COMSAT is nothing more than a useless middleman, in fact, the current value of the INTELSAT circuits that U.S. carriers now occupy is largely due to COMSAT's creation of a complex grid of valuable connectivities linking the U.S. with literally every country in the world. In addition, the company has secured foreign matches which WorldCom/Sprint now admit they cannot always obtain for themselves. And COMSAT is continually engaged in rearranging (or "regrooming") frequencies to effectively increase the supply of desirable INTELSAT capacity for its customers.<sup>22</sup>

The purpose of direct access is to allow U.S. users to *make their own arrangements* for INTELSAT capacity if they so choose: that is, to add their own value, not to appropriate the value created by COMSAT over a period of more than thirty years. It would be grossly unfair – as well as unlawful – for the Commission to deprive COMSAT of the fruits of its entrepreneurial endeavors, by allowing U.S. direct access users to benefit from COMSAT's value-added services while obtaining INTELSAT capacity at wholesale prices. This is especially the case where the beneficiaries are merely trying to "cherry-pick" the highly valued near-term rights to COMSAT's most desirable frequencies and connectivities.

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<sup>22</sup> In the "regrooming" process, COMSAT relocates isolated available capacity to frequencies adjacent to other such capacity, in order to aggregate the available capacity into larger "blocks" more useful to customers with higher bandwidth requirements. *See* Miller Affidavit ¶ 5.

**E. ATC Teleports' Proposal To Bar COMSAT From Reserving Any INTELSAT Capacity Would Make It Impossible For COMSAT To Compete.**

ATC Teleports' "solution" to the alleged lack of "sufficient opportunity" for direct access – that COMSAT be prohibited from exercising any FRRs or GRs for Bulk Capacity leases – is similarly flawed. ATC Teleports Comments at 2; ATC Teleports Reply Comments at 5. As hard as it may be for ATC Teleports (or its counsel) to accept, the ORBIT Act did not put COMSAT out of business. COMSAT still has the right to serve its customers, and given the small number of adverse commenters in this proceeding, there are clearly many customers that still wish to take service from COMSAT. Obviously, however, COMSAT cannot serve its customers if it cannot reserve Bulk Capacity on the same basis as everyone else. ATC Teleports' "solution" is thus both unfair and unlawful.

In any event, there is no conceivable justification for such a draconian "solution." COMSAT has demonstrated beyond doubt that it has not abused INTELSAT's reservation procedures. With the minor exceptions mentioned above, COMSAT has not submitted *any* guaranteed reservations in the past *five years* that were not on behalf of any identified customers. This is true for both new and renewing capacity. *See* Collins Affidavit ¶ 3. Moreover, COMSAT has abandoned the practice it occasionally followed in prior years of placing FRR reservations in advance of firm customer requirements to guarantee the availability of desirable capacity to potential U.S. users. *See* Twining Affidavit ¶ 12. That prior practice clearly benefited COMSAT's customers. It is at least arguable that the abandonment of this policy has harmed those customers by putting them at a disadvantage vis-a-vis foreign Signatories, as well as either foreign or U.S. direct access customers that are not subject to such constraints.

Despite ATC Teleports' claims to the contrary, COMSAT has *no* GR or FRR reservations on *any* of the incremental capacity that INTELSAT will be deploying in the next three years. In fact, at present, COMSAT has *no* new FRRs in place for *any* INTELSAT capacity, and only two more GRs without an underlying customer commitment. (COMSAT does have auto-FRR rights to some Bulk Capacity on the INTELSAT IXs and Xs, but only for current operational leases that will carry over onto *replacement* transponders.) *See* Twining Affidavit ¶ 4, 5.

The record in this proceeding also demonstrates that COMSAT has not taken any unfair advantage of its "automatic FRR" rights with respect to expiring Bulk Capacity leases. On the contrary, since the advent of direct access, it has relinquished those rights more often than it has exercised them – and, as it happens, it has *only* exercised them on behalf of existing customers. *See* Twining Affidavit ¶ 3. That COMSAT, in some cases, may have *offered* such capacity to other customers (but only after its existing customer decided not to renew) is not "outrageous behavior," but rather appropriate commercial behavior. ATC Teleports Reply Comments at 8. COMSAT's inventory of INTELSAT capacity is its only stock in trade; it cannot be anticompetitive for COMSAT to market that capacity.

Nor has COMSAT "admit[ted]" that it "force[s]" direct access customers to use INTELSAT's challenge procedures. *Id.* We have simply pointed out that this is one option available to anyone interested in obtaining capacity that is subject to an automatic FRR. We have further pointed out that, when challenges occur, COMSAT has no idea of its challenger's

identity (or even whether the challenger will use the capacity to serve the U.S. market).

Accordingly, COMSAT cannot use this process to “thwart” direct access in the U.S.<sup>23</sup>

Finally, as discussed above,<sup>24</sup> it is clear that, as direct access increases, direct access customers will obtain their own “automatic FRR” rights. Any advantages associated therewith will accrue to them as well as to COMSAT. For all these reasons, there is no need whatsoever for the Commission to adopt ATC Teleports’ not-so-modest proposal.

**F. Cable & Wireless’s Proposal To Create A Presumption of Anticompetitive Conduct Is Without Merit.**

Cable & Wireless proposes that the Commission presume COMSAT’s reservation of capacity is anti-competitive every time that there is a “swing of 10% or greater in COMSAT capacity commitments over a quarter.” Cable & Wireless Reply Comments at 1. This proposal is unnecessary and unsound. COMSAT does not reserve INTELSAT space segment capacity in the absence of an identified customer, *see* Section II.D., *infra*, so any such “swing” would merely reflect a spike in customer demand for INTELSAT capacity—not “hoarding” or other efforts to frustrate direct access.

Nonetheless, to assist the Commission in bringing these proceedings to an expeditious conclusion, COMSAT hereby states—for the record—that since the period beginning January 1998 COMSAT has *only once* experienced an upswing of 10% or greater in its INTELSAT space segment capacity commitments over any one quarter.<sup>25</sup> *See* Miller Affidavit ¶ 6. And this

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<sup>23</sup> *See* COMSAT Comments at 17-18.

<sup>24</sup> *See* Subpart I.A, *supra*.

<sup>25</sup> Based on customer demand, quarterly changes are in a continual state of flux. Those variations have been as shown in Attachment 1 to the Miller Affidavit.



upswing was due to a surge in demand for Internet services. Accordingly, were the Commission for some reason to adopt Cable & Wireless's arbitrary "10% test," it would have to conclude that COMSAT has not engaged in warehousing or other anticompetitive conduct. There is, accordingly, no cognizable capacity "problem" warranting regulatory intervention under Section 641—either directly or in the guise of FCC-imposed "guidelines" on COMSAT's commercial negotiations. *Cf.* Cable & Wireless Comments at 8 (advocating substantive "guidelines" for commercial negotiation that would inevitably require COMSAT to relinquish capacity requested by a U.S. direct access user).

**G. The Commission Lacks Authority To Impose Unique and Burdensome Regulations On The Post-Privatization Distribution Arrangements Of INTELSAT L.L.C.**

The ORBIT Act distinguishes between the international treaty organization "INTELSAT" and any private "successor entity" that might be created from INTELSAT's privatization or assets. *Compare* ORBIT § 681(a)(1), 47 U.S.C. § 769(a)(1) *with* ORBIT § 681(a)(7), 47 U.S.C. § 769 (a)(7); *see also* COMSAT Comments at 35-37 (discussing this distinction). Specifically, the Act provides for "direct access" only to "INTELSAT"—not to any "successor entity." ORBIT § 641(a), 47 U.S.C. § 765(a). Accordingly, ORBIT provides no statutory basis for imposing unique and burdensome regulation on the distribution arrangements of INTELSAT L.L.C. (INTELSAT's proposed "successor entity").

To the contrary, ORBIT provides for the *repeal*, upon privatization, of the provisions of the Communications Satellite Act of 1962 under which the Commission now regulates the rates, terms, and conditions of carrier access to INTELSAT. *See* COMSAT Comments at 35-36 (noting that upon privatization, ORBIT § 645(4) will repeal 47 U.S.C. § 721(c)(2)); *accord Capacity NPRM*, ¶ 9 (noting same). Thus, once privatization occurs, the legal basis underlying

the Commission's original claim of authority to implement direct access to INTELSAT will cease to be effective. Moreover, a basic purpose of ORBIT was to convert INTELSAT into a regular commercial corporation—one that would be regulated in the same manner as other such entities. For this reason, Senator Sarbanes reported that, in enacting ORBIT:

Congress is [only] addressing direct access to INTELSAT *before it privatizes*. After privatization, *when INTELSAT become a commercial company like any other, it can make whatever business decisions it wants with respect to marketing or distribution arrangements—again, just as other companies do*. Once privatized, the government should not be interfering, let alone dictating, these arrangements one way or another.


146 Cong. Rec. S1504 (daily ed. March 21, 2000) (statement of Sen. Sarbanes) (emphasis added).

Recognizing the force of this legal position, not one commenter even suggested how the Commission might have authority to impose such regulatory burdens on Intelsat L.L.C. Nor could they. As stated by Senator Sarbanes, the Commission has no more authority to regulate Intelsat L.L.C.'s distribution arrangements than it has authority to single out and dictate the distribution arrangements of any other private company.

## CONCLUSION

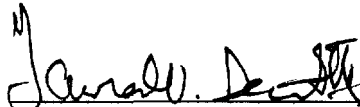
As demonstrated above, there is no evidence that users lack sufficient opportunity to obtain direct access. The Commission should so conclude and terminate this inquiry promptly.

Respectfully submitted,

  
Warren Y. Zeger  
Howard D. Polsky  
Keith H. Fagan

**COMSAT CORPORATION**  
6560 Rock Spring Drive  
Bethesda, MD 20817  
(301) 214-3000

July 25, 2000

  
Lawrence W. Secrest III  
Daniel E. Troy  
Kristina Reynolds Osterhaus

**WILEY, REIN & FIELDING**  
1776 K Street, N.W.  
Washington, D.C. 20006  
(202) 719-7000

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington D.C. 20554**

In the Matter of	)	
	)	
Availability of INTELSAT	)	MD Docket No. 00-91
Space Segment Capacity to	)	
Users and Service Providers	)	
Seeking to Access	)	
INTELSAT Directly	)	
To: The Commission	)	

**AFFIDAVIT OF ROBERT TWINING**

1. My name is Robert Twining. I am the Vice President of Sales & Marketing for COMSAT World Systems. I have held this position since October 1992.
2. I have read COMSAT's Response Comments in the above-styled proceeding, and I believe them to be true and accurate.
3. COMSAT has placed no GR or FRR reservations for any of the new incremental capacity that INTELSAT will be deploying in the next three years.
4. COMSAT has no right to any Bulk Capacity on any satellite in the planned INTELSAT IX and INTELSAT X series, other than the right to carry over certain current leases to replacement satellites.
5. As of Monday, July 24, 2000, no FRRs and only two GR's placed by COMSAT without an underlying customer commitment will be in effect.
6. Of COMSAT's fifty-six Bulk Capacity leases that have come up for renewal since direct access was implemented, it has relinquished thirty and renewed only twenty-six.

7. WorldCom's charge that COMSAT used WorldCom's direct access submissions to INTELSAT to obtain INTELSAT lease capacity for Malaysia and Brazil is incorrect. COMSAT did not secure either of these leases.

8. INTELSAT's current deployment plan calls for an overall increase in INTELSAT capacity of 45% over the next three years.

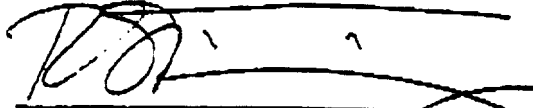
9. Since 1995, COMSAT has on fewer than five occasions reserved capacity by placing a GR without having first obtained an underlying commitment from a customer.

10. With the lone exception of a single transponder that COMSAT has leased for its own business development purposes, COMSAT only holds two GRs for a small amount of capacity on the INTELSAT system that do not have an underlying COMSAT commitment associated with them.

11. During recent negotiations with Worldcom executives, they made it clear that Worldcom would accept an agreement with COMSAT for renewing circuits (for longer terms at lower prices) without the necessity for a larger volume traffic agreement being concluded between COMSAT and Worldcom.

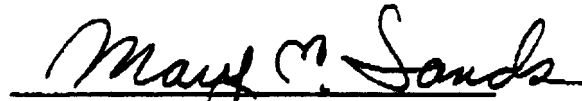
12. COMSAT has abandoned the practice it occasionally followed in prior years of placing FRR reservations in advance of firm customer requirements to guarantee the availability of desirable capacity to potential U.S. users.

13. When COMSAT's contracts with INTELSAT expire, COMSAT does not routinely hold the capacity in question without an identified customer requirement. For example, since the advent of direct access, COMSAT has relinquished approximately as many Bulk Capacity leases as it has retained - and it has retained capacity only where there is an identified customer need for the capacity.

  
Robert Twining

STATE OF Maryland  
COUNTY OF Montgomery ss.

Subscribed and sworn to before me this 25 day of July, 2000.

  
Notary Public

My Commission Expires:

Mary E. Sands, Notary Public  
Montgomery County  
State of Maryland  
My Commission Expires March 01, 2003

— Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington D.C. 20554

In the Matter of	)	
	)	
Availability of INTELSAT	)	MD Docket No. 00-91
Space Segment Capacity to	)	
Users and Service Providers	)	
Seeking to Access	)	
INTELSAT Directly	)	
	)	
To: The Commission		

**AFFIDAVIT OF THOMAS COLLINS**

1. My name is Thomas Collins. I am the Vice President and General Manager of COMSAT World Systems. I have held this position since October 1999.

2. I have read COMSAT's Response Comments in the above-styled proceeding, and I believe them to be true and accurate.

3. It has been COMSAT's practice neither to reserve INTELSAT space segment nor exercise any "automatic FRRs" without first securing a firm commitment from a specific customer. Only on a few occasions has COMSAT reserved capacity without a firm customer commitment. As of today, all but about 2.5% of reserved capacity has been sold.

4. COMSAT has not entered into "rolling" extensions of its INTELSAT circuits for the past five years. Although COMSAT had previously entered into such extensions for individual circuits, it did so only in order to secure lower, long-term rates from INTELSAT.


5. At a meeting on March 30, 2000, to discuss a COMSAT service proposal, MCI WorldCom stated that in submitting their direct access orders to INTELSAT, they had to "test the process" by submitting numerous orders for unavailable frequencies. Mr. Paul Bates, Mr. George

Clutter of MCI WorldCom, Mr. Robert Twining, Mr. Ted Boll, Mr. Howard Polsky, Mr. Keith Fagan, and myself of COMSAT attended the meeting.

6. COMSAT has never used knowledge of customers' direct access submissions to INTELSAT to "exploit or interfere with" these customers' direct access plans. During the first three months of direct access—the only time during which COMSAT had access to this information—COMSAT maintained a policy pursuant to a contractual agreement with INTELSAT that prohibited COMSAT's sales personnel from having access to this information.


7. To my knowledge, COMSAT's policy referred to in ¶ 6 was *never* breached. On a few occasions, a direct access user—WorldCom—ignored the express instruction set forth in COMSAT's tariff and erroneously sent its direct access submission to INTELSAT directly to COMSAT's sales and operations personnel—as opposed to COMSAT's Signatory office, as the tariff directed.

8. Since 1996, COMSAT has only once experienced an upswing of 10% or greater in its INTELSAT space segment capacity commitments during any one business quarter. That single upswing of greater than 10%, which occurred in the fourth quarter of 1999, was driven entirely by customer demand, and particularly for Internet capacity.

  
Thomas Collins

STATE OF Maryland  
COUNTY OF Prince George's ss:

Subscribed and sworn to before me this 24<sup>th</sup> day of July, 2000.

  
Notary Public

My Commission Expires:

My Commission Expires  
May 4, 2003



Before the  
— **FEDERAL COMMUNICATIONS COMMISSION**  
Washington D.C. 20554

In the Matter of	)	
	)	
Availability of INTELSAT	)	MD Docket No. 00-91
Space Segment Capacity to	)	
Users and Service Providers	)	
Seeking to Access	)	
INTELSAT Directly	)	
	)	
To: The Commission		

**AFFIDAVIT OF SUSAN P. MILLER**

1. My name is Susan Miller. I am the Vice President of Engineering and Operations for COMSAT World Systems. I have held this position since June of 1998.

2. I have read COMSAT's Response Comments in the above-styled proceeding, and I believe them to be true and accurate.

3. COMSAT service requirements that could not be fulfilled by INTELSAT amounted to approximately thirty-five 36 MHz equivalent transponders.

4. The capacity COMSAT currently has under contract with INTELSAT has been substantially improved by COMSAT through its own efforts over many years.

5. In the "regrooming" process, COMSAT relocates isolated available capacity to frequencies adjacent to other such capacity, in order to aggregate the available capacity into larger "blocks" more useful to customers with high bandwidth requirements.

6. Since the period beginning January 1998 COMSAT has only once experienced an upswing of 10% or greater in its INTELSAT space segment capacity commitments over any one

quarter. Based on customer demand, quarterly changes are in a continual state of flux. Since January 1998, those variations have been as shown in Exhibit 1.

Susan P. Miller  
Susan P. Miller

STATE OF Maryland  
COUNTY OF Montgomery ss:

Subscribed and sworn to before me this 25 day of July, 2000.

Mary E. Sands  
Notary Public

My Commission Expires:

**Mary E. Sands, Notary Public  
Montgomery County  
State of Maryland  
My Commission Expires March 01, 2003**

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington D.C. 20554

In the Matter of	)	
	)	
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Space Segment Capacity to	)	
Users and Service Providers	)	
Seeking to Access	)	
INTELSAT Directly	)	
	)	
To: The Commission		

**AFFIDAVIT OF JOHN H. MATTINGLY**

1. My name is John H. Mattingly. I am the President of COMSAT Satellite Services. I have held this position since September of 1997.

2. I have read COMSAT's Response Comments in the above-styled proceeding, and I believe them to be true and accurate.

3. During June, 1999, COMSAT and WorldCom were discussing a possible voluntary agreement on the issues in this proceeding. Substantial progress was being made, but at the critical moment WorldCom cut off discussions for reasons they said were purely political.

4. COMSAT and WorldCom have been able to agree on mutually advantageous deals when commercial negotiations are conducted by business people.

  
 John H. Mattingly

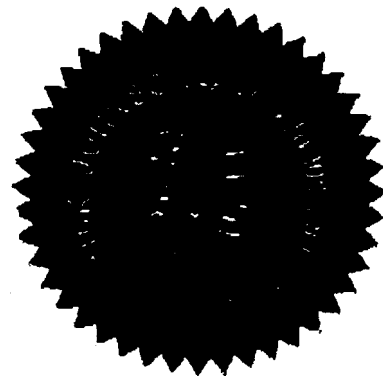
STATE OF Maryland  
 COUNTY OF Montgomery ss:

Subscribed and sworn to before me this 25<sup>th</sup> day of July, 2000.

Derrick Johnson  
Notary Public

My Commission Expires:

**DERRICK JOHNSON  
NOTARY PUBLIC STATE OF MARYLAND  
MY COMMISSION EXPIRES DEC. 1, 2003**





Thomas Collins  
Vice President & General Manager

6560 Rock Spring Drive  
Bethesda, Maryland 20817  
Telephone 301 214 3629  
Fax 301 214 7221

February 11, 2000

Mr. Paul Bates  
Vice President, International Networks Engineering  
MCI WorldCom  
2400 North Glenville Drive  
Richardson, TX 75082

Dear Paul:

Thank you for your telephone call yesterday in regard to COMSAT's January 28, 2000, proposal to MCI WorldCom for expanded satellite service. I'm pleased to hear that you believe COMSAT and MCI WorldCom can conclude a new satellite service agreement within the next thirty (30) days. COMSAT will work toward your schedule and apply the necessary resources to conclude a new contract. This is a high priority for COMSAT. We understand that while MCI WorldCom has expressed agreement with a number of elements of our proposal, a few others still need to be resolved. COMSAT's proposal was presented as a package offer and we will work with MCI WorldCom to adjust the elements of the package to conclude a mutually agreeable contract.

Upon your request, I've followed up on MCI WorldCom's claim that COMSAT is holding direct access orders and not processing them in a timely manner. Mr. George Clutter stated on our conference call that Mr. Britt Lewis of Intelsat made that statement about COMSAT. After our telephone call, I talked to Mr. Lewis personally. Mr. Lewis unequivocally stated that COMSAT is not holding or sitting on any MCI WorldCom direct access orders. I then requested Mr. Lewis to call Mr. Clutter immediately to clarify this apparent misunderstanding. The only MCIW orders that COMSAT has not processed promptly were for U.S. to Brazil service, and we notified you of our position with respect to these orders. We understand the FCC will be clarifying its Order on this issue and COMSAT will act promptly in accordance with that decision. Paul, I don't know where MCI WorldCom received this inaccurate information; however, I hope this matter is finally put to rest.

Thank you for your business.

Sincerely,

  
Tom Collins

bcc: Betty Alewine  
John Mattingly  
Warren Zeger  
Howard Polsky

Robert Twining  
Joanne Tanner  
Nancy Nolting

## FAX MESSAGE



Rich Young  
Director, Global Facilities  
Planning & Investments  
International Network Services  
9221 Ward Parkway, Suite 110  
Kansas City, Missouri 64114  
Telephone: (816) 854-2867  
FAX: (816) 854-2869  
Inst: rich.young@mail.sprint.com

TO: Ms. Joanne Tanner  
Director  
International Communications Sales  
COMSAT World Systems (CWS)

FAX: 1-301-214-7142

REF: Your letter dated June 13, 2000

DATE: June 27, 2000

SUBJECT: Renewal of Sprint 's Lease Contract with COMSAT

---

Dear Joanne,

Thank you for your letter referenced above with COMSAT's revised proposal for a new service agreement with Sprint.

As you know, COMSAT and Sprint began our re-negotiation process in mid-February, 2000 and have since exchanged proposals and discussed many ideas in an effort to reach a win-win solution. We believe that both COMSAT and Sprint have successfully communicated our positions and developed a common understanding of the business needs of each of our respective corporations. In doing so, we have each strived to compromise to the extent where an agreement would be possible, ensuring our individual objectives could be met. At this point however, it appears we are unable to achieve an agreement where the common objective for a win-win solution is possible.

Without reviewing the detail of our previous correspondences, we understand that Sprint is unable to commit to the traffic volumes and terms in a new service agreement necessary for COMSAT to offer prices that are acceptable to Sprint. At this time, we don't believe that we are close enough in our latest proposals to offer another counter proposal which would be acceptable to COMSAT. However, as you stated in your letter, a volume traffic deal is not critical to reaching an agreement for renewing circuits for longer terms at lower prices. In fact, during our negotiations for a new service agreement, we have continued to work successfully together to renew individual circuits in a manner that is acceptable to both COMSAT and Sprint.

At this time, it is Sprint's view that we should place on hold our current effort to negotiate a new service agreement, until further developments might offer another opportunity to resume these negotiations. We do not view this as a rejection to any previous offers and desire to retain the right to initiate negotiations with COMSAT for a new service agreement at any point in the future.

We appreciate and value the working relationship that has been developed over the years between COMSAT and Sprint and look forward to further expanding our business in the future.

Best Regards,



Rich Young

Cc: Craig Spiegelberg  
Randy Markway  
Vuong Nguyen

BILLY TALVIN  
THIRD DISTRICT, LOUISIANA  
COMMITTEE ON COMMERCE  
Subcommittee on Telecommunications,  
Trade, and Consumer Protection  
COMMITTEE ON RESOURCES  
VIA ELECTRONIC MAIL  
WASHINGTON OFFICE  
TELEPHONE: 202-455-4261  
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www.house.gov/talvin

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-1803**

May 3, 2000

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The Honorable William E. Kennard  
The Honorable Susan Ness  
The Honorable Harold W. Putschgott-Roth  
The Honorable Michael K. Powell  
The Honorable Gloria Tristani  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

ATTACHMENT G

Dear Mr. Chairman and Commissioners:

As you know, the Open-market Reorganization for the Betterment of International Telecommunications ("ORBIT") Act became law on March 17, 2000. Section 641(b) of the ORBIT Act requires the Commission to complete, within 180 days of enactment, a rulemaking "to determine if users or providers of telecommunications services have sufficient opportunity to access INTELSAT space segment capacity directly from INTELSAT to meet their service or capacity requirements." I focused particular attention on this provision of the Act, and securing agreement on the terms of this provision was key to my overall support of the Act.

In that regard, I would remind you that the ORBIT Act also provides, in Section 641(c), that "Nothing in this section shall be construed to permit the abrogation or modification of any contract." Thus, Congress clearly prohibited the Commission from taking any action to interfere with COMSAT's contracts, either with its customers or with its supplier, INTELSAT. Since Congress has determined that the Commission does not have the authority to abrogate or modify COMSAT's contracts, the Commission should not waste public resources exploring a policy option that Congress has specifically foreclosed.

As I said in my floor statement at the time ORBIT was passed, "[n]o one can doubt that COMSAT has a property interest in its existing contracts." COMSAT also has a property interest in the particular satellite capacity secured by its contracts with INTELSAT. Under these circumstances, both the House and Senate rejected any abrogation of COMSAT's contracts because it would have amounted to an unconstitutional taking of COMSAT's property and would have subjected the U.S. Government to substantial claims for damages.



Of course, Congress has also determined that U.S. carriers and users should be able to have Level 3 direct access to INTELSAT. The rulemaking mandated by Section 641(b) is intended to explore whether customers' opportunity to obtain such access is being improperly thwarted. In conducting that rulemaking, however, the Commission must also be mindful of the other objectives of the ORBIT Act, including the protection of COMSAT's property rights. Therefore, as I said in my floor statement, "I will watch the Commission closely as it implements this legislation to ensure that it does not force the abrogation of contracts or other such agreements."

Sincerely,

A handwritten signature in black ink, appearing to read "Billy Tauzin". The signature is fluid and cursive, with the first name "Billy" and last name "Tauzin" clearly distinguishable.

BILLY TAUZIN

Chairman, Subcommittee on  
Telecommunications, Trade and  
Consumer Protection

**United States Senate**  
WASHINGTON, DC 20510-2003

May 10, 2000

The Honorable William E. Kennard, Chairman  
The Honorable Susan Ness  
The Honorable Harold W. Furchtgott-Roth  
The Honorable Michael K. Powell  
The Honorable Gloria Tristani  
Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington DC 20554

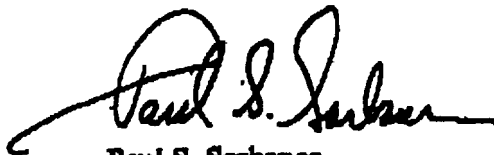
Dear Mr. Chairman and Commissioners,

As co-sponsors of the recently enacted ORBIT Act, we are writing to encourage the FCC to work to ensure that Congressional intent is followed closely in implementing this law.

We want to draw the Commission's attention to two key provisions in particular. First, Section 641(c) of the Act does not permit the abrogation or modification of any COMSAT contract, either with its customers or capacity suppliers. Second, the ORBIT Act requires the FCC to conduct a factual inquiry regarding the implementation of direct access. We urge the FCC to ensure that its Notice of Proposed Rulemaking is consistent with the requirements of the Act.

Thank you for your attention to this important matter and for all of your critical work on this legislation.

Sincerely,



Paul S. Sarbanes  
United States Senator



Barbara A. Mikulski  
United States Senator

# ATTACHMENT I

CONRAD BURNS  
MONTANA

## United States Senate

WASHINGTON, DC 20510-2003  
(202) 224-2944

COMMITTEES:  
APPROPRIATIONS  
COMMERCE, SCIENCE, AND  
TRANSPORTATION  
ENERGY AND NATURAL  
RESOURCES  
SMALL BUSINESS  
SPECIAL COMMITTEE ON AGING

May 18, 2000

The Honorable William E. Kennard  
Chairman  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Dear Chairman Kennard:

As you know, Congress sought to enhance competition in the satellite communications market with the unanimous passage of S. 376 ("ORBIT"). This consensus legislation, signed into law by President Clinton on March 17, 2000, was made possible only by the willingness of the Senate and House conferees to reconcile several important policy differences between the original Senate and House approaches to satellite reform.

One of the most significant issues we resolved concerned the treatment of INTELSAT's space segment capacity. Section 641(b) of ORBIT directs the Commission "to complete a rulemaking to determine if users or providers of telecommunications services have sufficient opportunity to access INTELSAT space segment capacity directly from INTELSAT to meet their service or capacity requirements."

The purpose of Section 641(b) is to have the Commission, through a rulemaking proceeding, undertake a factual inquiry on whether or not INTELSAT's space segment capacity is being warehoused, i.e., tying up INTELSAT capacity, irrespective of supply and demand considerations, to prevent other users and providers of telecommunications services from enjoying access to INTELSAT space segment capacity. If the conclusion of the proceeding at the end of 180 days is that such warehousing is indeed occurring, the Commission then has authority to take "appropriate action."

Congress intentionally limited the scope of Commission action that might be "appropriate" through enactment of Section 641(c), which precludes the Commission from imposing confiscatory regulatory schemes, which, in effect, modify or abrogate "any contracts." We intended the phrase "any contracts" to mean all contracts or similar commercial agreements to which COMSAT is a party. Therefore, this language prevents the Commission from using "fresh look" to impair contracts generally or the related concept of "portability" to interfere with contracts dealing specifically with space segment capacity. A cornerstone of the Senate-House

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compromise that produced ORBIT was the inclusion of Section 641(c) to protect contracts as guaranteed under the Constitution.

Just as we directed the Commission to prevent third parties from circumventing the intent of Section 641, I strongly caution the Commission not to circumvent the intent of Congress by relying on fanciful legal theories that conflict with the limited authority provided in Section 641. Engaging in such tactics would call into serious question the Commission's ability to implement accurately and fairly other aspects of ORBIT.

I look forward to your reassurance of your commitment to an implementation that faithfully adheres to ORBIT.

Sincerely,



Conrad Burns  
United States Senator

cc:

The Honorable Susan Ness  
The Honorable Harold W. Furchtgott-Roth  
The Honorable Michael K. Powell  
The Honorable Gloria Tristani

**QUARTERLY FLUCTUATIONS IN  
COMSAT'S INTELSAT PAYMENTS**

<b>YEAR</b>	<b>QUARTER</b>	<b>PERCENTAGE CHANGE</b>
1992	1 <sup>st</sup>	
1992	2 <sup>nd</sup>	-2.83%
1992	3 <sup>rd</sup>	4.71%
1992	4 <sup>th</sup>	5.62%
1993	1 <sup>st</sup>	2.92%
1993	2 <sup>nd</sup>	-5.23 %
1993	3 <sup>rd</sup>	3.99%
1993	4 <sup>th</sup>	1.33%
1994	1 <sup>st</sup>	-5.47%
1994	2 <sup>nd</sup>	11.26%
1994	3 <sup>rd</sup>	-1.53%
1994	4 <sup>th</sup>	4.22%
1995	1 <sup>st</sup>	-2.29%
1995	2 <sup>nd</sup>	-1.55%
1995	3 <sup>rd</sup>	-0.57%
1995	4 <sup>th</sup>	20.78%
1996	1 <sup>st</sup>	-2.39%
1996	2 <sup>nd</sup>	-3.39%
1996	3 <sup>rd</sup>	9.99%
1996	4 <sup>th</sup>	4.08%
1997	1 <sup>st</sup>	-2.60%
1997	2 <sup>nd</sup>	-2.39%
1997	3 <sup>rd</sup>	1.22%
1997	4 <sup>th</sup>	3.31%
1998	1 <sup>st</sup>	-0.85%
1998	2 <sup>nd</sup>	2.29%
1998	3 <sup>rd</sup>	0.86%
1998	4 <sup>th</sup>	-2.27%
1999	1 <sup>st</sup>	-7.88%
1999	2 <sup>nd</sup>	0.86%
1999	3 <sup>rd</sup>	4.53%
1999	4 <sup>th</sup>	16.07%
2000	1 <sup>st</sup>	4.35%

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing comments of  
COMSAT Corporation was served by hand to those parties indicated by an asterisk, or otherwise  
by first-class mail this 25th day of July, 2000.

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Melissa A. Reed